

REMARKS

Reconsideration of the present application is requested on the basis of the following particulars.

1. In the Drawings

As indicated above, FIG. 8 is amended as shown in the replacement sheet appended herewith. In FIG. 8, reference numerals and indicators have been provided to more precisely denote relationships of the various existing edges of each paddle 34 of the impeller shown in this drawing. More specifically, reference numerals have been provided to identify various edges of the paddles and their relationship with the axis A of the base plate 32. No new structural features are added to FIG. 8.

Acceptance of the replacement sheet of FIG. 8 is respectfully requested in the next Office communication.

2. In the Specification

The specification has been amended to refer to the replacement sheet of FIG. 8. As indicated above, no new structural features were added to FIG. 8. This amendment does not introduce new matter to the application since all of the elements now denoted existed in the drawings and written description of the pending application as originally filed.

Acceptance of the amendment to the specification is respectfully requested in the next Office communication.

3. In the Claims

In the "Amendment of the Claims," claims 1-7 are canceled without prejudice or disclaimer. New claims 8-17 are added to the application and recite embodiments of the inventive impeller and a rotary food slicing including the inventive impeller. New

independent claims 8 and 13 recite substantially the same features as canceled claims 1 and 7, however, these new claims are drafted in clearer terms and more positively recite each of the elements and features of the inventive impeller.

Both claims 8 and 13 recite that a first radial distance is defined between a first corner of each paddle and the axis of rotation of the base plate, and a second radial distance is defined between a second corner of each paddle and the axis of rotation of the base plate wherein the first radial distance is greater than the second radial distance. Support for these features is provided in FIG. 8 as originally filed, and in the specification as currently amended. It will be noted that these features were inherent in claims 1 and 7, as originally filed. This new language is not intended as a narrowing amendment in that the new claims essentially make the recitation of the implicit relationships between the first and second corners of the paddle relative to the axis of rotation of the base plate explicit in the current description of the impeller.

Claims 9-12, which depend directly from claim 8, and claims 14-17, which depend directly from claim 13, further define the relationships of the edges of each paddle. Support for these new claims is clearly found in FIG. 8 and in the specification on page 10, line 12 through page 12, line 6.

It is submitted that the new claims comply with U.S. laws and regulations. Acceptance of the new claims is respectfully requested in the next Office communication.

4. Rejection of Claims 1, 5 and 6 Under 35 U.S.C. § 102(b) as Being Anticipated by U.S. Patent 2,478,651 (Blachere)

The Applicants respectfully traverse the rejection of claims 1, 5 and 6 as being anticipated by the disclosure of Blachere on the basis that the Blachere disclosure does not disclose or suggest each and every feature of the impeller recited in new claims 8 and 13. The Applicants also submit that one of ordinary skill in the art would not infer from the teachings of Blachere the limitations of the impeller recited in

pending claims 8 and 13. Moreover, the Examiner has failed to provide any evidence to support his assertion that the vintage destemming and pressing machine of Blanchere would be capable of performing the recited features of the impeller of the pending application.

a. Basic Requirements of Anticipation

Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. *See, for example, In re Paulsen*, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994); and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

The dispositive question regarding anticipation is whether one skilled in the art would reasonably understand or infer from the prior art reference's teaching that every claim limitation was described in that single reference. *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1368, 66 USPQ2d 1801, 1809 (Fed. Cir. 2003). To establish anticipation, it must be shown that a single prior art reference describes each and every limitation of a claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 USPQ 81, 90 (Fed. Cir. 1986); cert. denied, 480 U.S. 947 (1987). The description in the reference may be either express or inherent. *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

In order for a reference to serve as an anticipatory reference when such reference is silent about an asserted inherent characteristic, the gap in the teachings of the reference may be filled with recourse to extrinsic evidence. It will be noted, however, that evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference. *Cont'l Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

b. The Blanchere Disclosure Fails to Anticipate the Impeller of Claims 8 and 13

The Blanchere disclosure fails to describe or suggest the orientation of the paddles recited in pending claims 8 and 13 of the pending application. Claims 8 and 13 recite an impeller having paddles wherein the paddles define a first radial distance extending between a first corner of each paddle and the axis of rotation of a base plate, and a second radial distance extending between a second corner of each paddle and the axis of rotation of the base plate. The first radial distance is further defined as being greater than the second radial distance.

In observing FIG. 2, the Blanchere disclosure makes it abundantly clear that the vanes of the Blanchere disclosure have corners corresponding to trailing and leading edges of the vanes which are of the same radial distance relative to the center axis of the axis of cylinder 5. There is nothing in the teachings of Blanchere that would provide a suggestion to a skilled artisan of the desirability to modify the vanes according to their configuration recited in pending claims 8 and 13. Thus, the Blanchere disclosure is silent as to the orientation of the vanes other than the embodiment shown in FIG. 2. The Examiner has not proffered any evidence to make up for this glaring shortcoming of the Blanchere disclosure.

c. The Machine of Blanchere Is Incapable of Performing the Function of the Impeller of the Pending Application

The Examiner indicates that the machine of Blanchere is capable of performing the function of conveying elongated food products by axially aligning such food products against a base plate as in the impeller of the present application. The Applicants respectfully disagree.

According to the specification of the pending application (page 8, lines 1-12), the orientation of the paddles with respect to the base plate and ring of the inventive impeller improves the alignment of food products in conjunction with the centrifugal

forces generated on the food products during rotation of the impeller so that the food products are more securely positioned and held when they come into contact with the slicing blade so they do not dislodge easily. Additionally, the orientation of the paddles urges the centrifugal forces to index the food products toward the base during rotation so as to align the food products with the slicing blade, thus providing an indexing action on the food products with respect to the slicing blade and the circular blades of the slicing machine. Furthermore, the orientation of the paddles protects the food products from colliding with other food products entering the impeller so as to prevent disorientation of food products already carried by the impeller.

On the contrary, the machine of Blachere performs a substantially different function. The disclosure of Blachere is related to a grape destemming and pressing machine, and is arranged to receive grapes in bunches and subject such grapes to two successive crushing or pressing treatments. Intermediate the crushing treatments, the stems and stalks are separated from the crushed grape mixture and expelled from the machine. It is in this intermediate stage that the vanes of Blachere identified in the Office Action are used.

The vanes of the Blachere disclosure are described as being arranged to rake and stir up the mixture of crushed grapes and broken stalks and stems and to create an air draft which draws the stalks and stems out of the machine (col. 3, lines 22-29). It is clear that the vanes of the Blachere disclosure are provided to expel certain parts of the grapes out of the machine while maintaining other parts of the crushed grapes within the machine. Thus, while the vanes are provided to separate the portions of the grape mixture, this can hardly be construed as aligning elongated food products against a rear base plate, as performed by the impeller of the present application.

Thus, when properly interpreted, the disclosure of Blachere requires vanes that are provided to separate certain portions of food products. The Blachere patent does not discuss or show an impeller construction that is provided to convey and align food products, but instead describes a general purpose food product crushing and

separating machine. Although the Blachere patent does describe vanes extending generally at a constant and identical angle relative to the axis of a cylinder, it does not illustrate the vanes as extending at an angle relative to the radius of the cylinder. Thus, even an artisan of ordinary skill must guess about how exactly the configuration of the vanes of Blachere would substitute for the configuration of the paddles of present application and whether such vanes would even be capable of conveying and aligning food products. In fact, the disclosure of Blachere makes no suggestion of any kind about the structural suitability of the vanes for conveying and aligning elongated food products against a rear base plate.

While the Examiner asserts that the Blanchere machine is capable of performing the function of the paddles recited in claims 8 and 13, the Examiner has provided no such evidence. *The Applicants respectfully request the Examiner to provide the sufficient evidence that would make clear that the missing descriptive matter of the Blanchere disclosure is necessarily present in the machine described in this reference.*

In view of these observations, the Applicants respectfully submit that the Blanchere disclosure fails to disclose or suggest each and every feature of the recited features of claims 8 and 13. Thus, this rejection is improper in view of the new claims.

Withdrawal of this rejection is respectfully requested.

5. Rejection of Claims 1 and 5-7 Under 35 U.S.C. § 103(a) as Being Unpatentable Over U.S. Patent 4,625,606 (Pinegar et al.) in View of U.S. Patent 2,478,651 (Blachere)

This rejection is respectfully traversed on the basis that the disclosure of Pinegar et al. fails to make up for the above-described shortcomings of the Blachere disclosure in view of new claims 8 and 13.

More specifically, the Pinegar et al. disclosure fails to disclose or suggest providing an impeller having paddles wherein the paddles define a first radial distance

extending between a first corner of each paddle and the axis of rotation of a base plate, and a second radial distance extending between a second corner of each paddle and the axis of rotation of the base plate. The first radial distance is further defined as being greater than the second radial distance.

As indicated above, the Examiner has failed to provide any evidence from the Blanchere disclosure which would motivate a skilled artisan to modify the vanes described therein with the orientation of the paddles of the present application. Furthermore, the Examiner has not furnished any evidence stemming from the Pinegar et al. regarding the desirability of modifying the paddles shown and described therein with the orientation of the vanes of the Blanchere disclosure.

It is axiomatic that in making a rejection based on obviousness, particular findings and specific reasons must be provided as to why a skilled artisan would have been motivated to select references and to combine them to render a claimed invention obvious. See *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); See also *In re Rouffet*, 149 F.3d 1350, 1359, 47 U.S.P.Q.2d 1453, 1459 (Fed. Cir. 1998). When general knowledge is relied upon to negate patentability, that knowledge must be articulated in the record and cannot be resolved on "subjective belief and unknown authority." *In re Lee*, 277 F.3d 1338, 1342-43, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002).

The Applicants submit that the Examiner has failed to make the necessary showing of obviousness with the proposed combination of the Pinegar et al. and Blanchere disclosures. Instead, the proposed combination appears to be based on the very "subjective belief and unknown authority" that the courts warn is improper when making a rejection under 35 U.S.C. § 103(a).

While the Examiner indicates that the vanes of the Blanchere disclosure are equivalents of the paddles of the pending application, the Applicants disagree. As noted above, the vanes of the Blanchere disclosure not only are oriented in a different

configuration than those recited in claims 8 and 13, but they clearly perform a dissimilar function in the Blanchere machine.

Thus, the disclosures of Pinegar et al. and Blanchere, whether considered collectively or individually, fail to disclose or suggest each and every feature of claims 8 and 13. Moreover, this rejection fails on the basis that the Examiner has neglected to produce sufficient evidence within the Pinegar et al. and Blanchere disclosures themselves that would provide sufficient motivation for a skilled artisan to make the impeller recited in claims 8 and 13. Withdrawal of this rejection is therefore respectfully requested.

6. Conclusion

In view of the new claims and foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is requested that claims 8-17 be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicants' attorney, the Examiner is invited to contact the undersigned at the numbers shown below.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin J. CasSELL", written in a cursive style.

JUSTIN J. CASSELL

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